IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TROY W. KISSLER, individually,	)	**No. 24141-6-III**
Appellant,	)	
v.	)	
JULIE ANNE BUCKLAND, individually,	)	**Division Three**
Respondent,	)	
JULIE ANNE BUCKLAND and CARL R. BUCKLAND, a marital community,	)	
Defendants.	)	**UNPUBLISHED OPINION**

SWEENEY, C.J.—Assigning error to specific findings of fact and conclusions of law is essential for appellate review. No specific assignments of error were made here. We have, nonetheless, reviewed the challenges to the court's decision, find ample support for its conclusions of law in the unchallenged findings of fact, and therefore affirm.

FACTS

The court entered extensive findings of fact. The appellant has not assigned error

to any of them. And they are, therefore, the basis for this factual recitation.

Merlin and Nelly Kissler were married. They had two children: Troy W. Kissler and Julie Anne Buckland, the parties to this lawsuit. Merlin and Nelly ran two farms, one known as the "Home Place" and a second known as the "Moody Place." Merlin inherited the Home Place and he and Nelly bought the Moody Place after they were married. Both farms had wells with state certified water rights, certificate 9282 (the Home Place) and certificate G3-01153 (the Moody Place). Merlin leased the Home Place and the water rights from both the Home Place and the Moody Place to Berend Friehe in 1996 for 10 crop years.

Merlin died in 1996. He left his interest in the Moody Place to his daughter Julie Anne, subject to a life estate in his wife Nelly. He left the Home Place to Troy, also subject to a life estate in Nelly. Nelly executed an amended farm lease with Mr. Friehe in January 2001. The lease was for a term of 11 crop years.

Mr. Friehe's farming practices required that he "mov[e] [his irrigation] circles and the water around on a yearly basis." Clerk's Papers (CP) at 1022. And this required that he "apply to [the Department of Ecology (Department)] for a seasonal change in the use of the water as his farming operation required." *Id.* "No changes could be made until approved by [the Department] which could take several months and each request for seasonal change could be protested by other certificate holders in the general area." *Id.* at

1022-23. He therefore applied for a "permanent change of place of use for the Moody Ground Water Certificate No. G3-01153" in November 2001 to avoid this yearly application process. *Id.* at 1023. Both Mr. Friehe and Nelly signed the application. Mr. Friehe gave the Department an incorrect legal description of the property. So the Department's order mistakenly changed the place of use to some unrelated third party.

Nelly died on December 10, 2002 (before the Department order was entered). She left Julie Anne the Moody Place water right. She left Troy and Julie Anne undivided equal interests in her one-half interest in the Moody Place land. So the result following the deaths of Merlin and Nelly was that Troy received the Home Place, its water right, and an undivided one-quarter interest in the Moody Place land. And Julie Anne received the water right to the Moody Place and an undivided three quarters interest in the Moody Place land. Nelly named Troy and Julie Anne co-personal representatives of her estate.

Mr. Friehe filed a second application with the Department on March 13, 2003, to correct the error and transfer use of the Moody Place water right to the Home Place. Neither Mr. Friehe nor the Department knew that Julie Anne had a remainder interest or that she had inherited portions of the Moody Place and its water right. Troy signed the application as the personal representative of Nelly's estate. He did not tell Julie Anne. The Department completed its examination on June 16, 2003.

Julie Anne and Troy could not agree on the distribution of Nelly's estate. The

exact source of that dispute is not clear from this record. But it is also not necessary for our disposition. They submitted to mediation. And they ultimately agreed that Julie Anne would take the Moody Place together with its water right and Troy would take the Home Place and its water right.

Troy then claimed that he was entitled to the water right to the Moody Place. He argued that the transfer of that right through the Department of Ecology effectively vested that property right (the water right) in him. Troy sued to quiet title in the water right. The trial judge, sitting without a jury, concluded that Julie Anne was the owner of the Moody Place water right, refused to quiet title in Troy, and entered findings and conclusions to that effect.

DISCUSSION

Duty of Counsel to Assign Error to Specific Facts and Conclusions

We review a superior court's findings of fact to determine whether they are supported by substantial evidence. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). But we can only review those findings that the lawyer assigns error to. RAP 10.3(g); *see Jones*, 152 Wn.2d at 8. The appellate process requires that we review the record and decide whether a specific finding is supported by the record created at trial. We then accept findings that are not challenged as correct statements of fact and we treat them as true here on appeal. *Jones*, 152 Wn.2d at 8.

We do not give such deference to the court's conclusions of law, however. *Id.* at 8-9. We review a trial court's conclusions of law de novo. *Id.* The court's findings of fact must support its conclusions. *Bang D. Nguyen v. Dep't of Health, Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 530, 29 P.3d 689 (2001). But again we will not guess at or assume which of the court's conclusions a party objects to. The appellant must specifically assign error to an offending conclusion. RAP 10.3(g).

This process is more than just adherence to technicalities. Troy asks us to conclude that the judge made a mistake or a number of mistakes and to reverse his decision. But we cannot do that in any principled or even organized way unless Troy specifically tells us what it is he thinks the judge did wrong. Simply suggesting that the judge could have found other facts or drawn other conclusions and ultimately made another decision is not enough. The trial judge is frequently making choices among competing choices. So the question is not whether the judge could have made a different choice. The question is whether the choice the judge made can be supported by the record (in the case of findings) or the findings (in the case of conclusions).

Troy argues in the issue section of his brief that he challenges the trial court's finding of fact "that the Moody Place vested exclusively in [Julie Anne] at the time of Nelly Kissler's death." Appellant's Br. at 1. But he then refers to this challenged finding as a conclusion of law later in his brief. *Id.* at 16. He argues that the court erred when it

concluded that "Nelly's undivided one-half ownership of the Moody Place vested in [Julie Anne]." *Id.* But the court entered no such specific finding or specific conclusion. *See* CP at 1018-30. And so Troy fails to identify any specific finding as unsupported by the record or specific conclusion as unsupported by the findings.

The court here found that Nelly's will provided for separate ownership interests in the Moody Place and its water right (certificate G3-01153). CP at 1024 (finding of fact 14). And the court found that Nelly bequeathed her interest in the water right to Julie Anne. CP at 1024 (finding of fact 14). Nelly's will also provided that Julie Anne and Troy "each receive[] undivided equal interest[s] in . . . Moody Place." CP at 1024 (finding of fact 14). The court further found that Nelly held only a life estate in Merlin's interests in the Moody Place and certificate G3-01153, CP at 1021 (finding of fact 7), and, accordingly, could only convey a life estate so long as she was alive. Julie Anne owned the remainder interest. CP at 1021 (finding of fact 7).

Effect of the Department of Ecology Proceedings

Water rights are an interest in property. *Perrin v. Derbyshire Scenic Acres Water Corp.*, 63 Wn.2d 716, 720, 388 P.2d 949 (1964). And like any other property right, the interest may be conveyed. RCW 90.03.380(1); *Firth v. Hefu Lu*, 146 Wn.2d 608, 614-15, 49 P.3d 117 (2002). But the interest subject to conveyance is limited to the interest held. *Firth*, 146 Wn.2d at 615. So a holder of a life estate may only convey the interest that he

or she owns—here a life estate. *McDowell v. Beckham*, 72 Wash. 224, 226, 130 P. 350 (1913); *Parr v. Davison*, 146 Wash. 354, 356, 262 P. 959 (1928); 51 Am. Jur. 2d *Life Tenants and Remaindermen* § 32 (2000). The holder of a life estate cannot then convey an interest that exceeds his or her life—the remainder interest. *Parr*, 146 Wash. at 356; 51 Am. Jur. 2d, *supra*. And any attempt to do so is void. *See Parr*, 146 Wash. at 356; 51 Am. Jur. 2d, *supra*. In fact, title passes immediately upon a holder's death to the holder of the remainder interest.

Troy challenges, apparently, the trial court's determinations that: (1) the water rights applications were governed by chapter 90.44 RCW (regulating ground water rights); (2) Nelly did not own full (transferable) title to certificate G3-01153 (the Moody Place); and (3) Nelly could not therefore transfer an interest in that water right after her death since she no longer had any interest to transfer. CP at 1026-28, 1030. Here are some of the court's conclusions of law that may be implicated by Troy's challenges:

- Conclusions 4 and 5: The water rights applications are governed by chapter 90.44 RCW and RCW 90.44.100.
- Conclusion 14: Nelly's life estate in water certificate G3-01153 terminated at her death.
- Conclusion 15: Nelly did not have full title to certificate G3-01153 when she signed the November 5, 2001 Department application and could not have permanently transferred full title without Julie Anne's consent.
- Conclusion 16: The November 5, 2001 Department application did not seek to transfer ownership interest in water certificate G3-01153.

- Conclusion 17: The Department did not enter a decision on the water rights application until after Nelly's death; Nelly did not have any transferable interest after her death.

- Conclusion 18: Nelly's undivided one-half interest in certificate G3-01153 vested immediately in Julie Anne upon Nelly's death.

- Conclusion 19: Nelly's life estate in the other undivided one-half interest in certificate G3-01153 terminated upon her death and vested immediately in Julie Anne.

- Conclusion 20: The subsequent March 13, 2003 Department application did not seek to transfer ownership of certificate G3-01153.

- Conclusion 21: Troy's signature on the second Department application had no legal effect.

- Conclusion 29: Nelly could not transfer full title to certificate G3-01153 without Julie Anne's participation since Nelly did not own the complete title.

CP at 1026-28, 1030.

But each of these conclusions is amply supported by the court's findings. Merlin inherited the Home Place and a water right. Nelly and Merlin bought the Moody Place. They applied for and obtained a water right. The marital community owned the Moody Place and the related water right.

Merlin leased the Home Place, its water right, and the use of the Moody Place water right to Mr. Friehe in 1996 for a term of 10 crop years. CP at 1021 (finding of fact 6); Ex. 22. The lease transferred the use of the water rights to Mr. Friehe but only for the duration of the lease: "Lessee shall transfer

water rights back to Lessor at the end of the lease or any renewal term." CP at 1021 (finding of fact 6). Merlin died in 1996. He left his interest in the Moody Place, including the water right, to Julie Anne, subject to a life estate in Nelly. He devised the Home Place to Troy, subject to Nelly's life estate.

Nelly and Mr. Friehe amended the farm lease in January 2001, and extended its term from 10 crop years ending on November 1, 2006 to 11 crop years, ending on November 1, 2011. CP at 1022 (finding of fact 8); Exs. 22, 24. Nelly also agreed to execute any documents necessary for Mr. Friehe to use the water rights. CP at 1022.

Mr. Friehe's farming practices required that he move irrigation circles every year. CP at 1022. And applying to move the right to use the water from one property to another was both time consuming (it could take several months) and problematic (other water users could object). CP at 1022-23. So Mr. Friehe applied for a "permanent change of place of use for the Moody Ground Water Certificate No. G3-01153" in November 2001 to avoid the yearly application process. CP at 1023. The applications described the wrong property so the Department order mistakenly amended certificate G3-01153 to transfer the right to some third party.

Nelly died on December 10, 2002 (before the Department order was entered). Her will was admitted to probate. She left Julie Anne her interest in "Water Right Certificate G3-01153" (the Moody Place water right). CP at 1024. Her will provided that Troy and

Julie Anne each receive undivided equal interests in Nelly's interests in the Moody Place and the Home Place. A codicil to the will designated Troy and Julie Anne as co-personal representatives of Nelly's estate.

Mr. Friehe applied to correct the earlier error and to transfer the use of the Moody Place water right back to the Home Place on March 13, 2003. Troy signed the application as the personal representative of Nelly's estate. But he did not inform Julie Anne. The Department completed its examination on June 16, 2003.

Troy argues that the two applications and Department orders transferred ownership of the title to certificate G3-01153 from the Moody Place to the Home Place. RCW 90.03.340, .380. He argues this based on his proposed application of RCW 90.03.340 and .380.

But RCW 90.03.380 does not apply here. The Department applications sought to transfer the place of use of the water rights, not ownership, as described in RCW 90.03.380.[1] Any amendment to the Moody Place certificate must comply with RCW 90.44.100 (change in place of use). Simply filing an application to change the place of use of a water right does not convey an interest in that water right. RCW 90.44.100(1) ("After an application to, and upon the issuance by the department of an amendment to

[1] "The right to the use of water . . . may be transferred to another or to others and become appurtenant to any other land." RCW 90.03.380(1).

the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may . . . change the . . . place of use of the water."). The requested changes may not be made until the Department issues an amendment to the certificate of ground water right. *Id.*

Here, the Department ordered the amendment of the Moody Place water right after Nelly's death. Nelly's life estate in the undivided one-half interest in the Moody Place (including the water right) ended with her death. *Parr*, 146 Wash. at 356. Title immediately vested in Julie Anne, the holder of the remainder interest. *See McDowell*, 72 Wash. at 226; 51 Am. Jur. 2d, *supra*. And Nelly's undivided one-half interest in the certificate also transferred immediately, at her death, to Julie Anne under her will. RCW 11.04.250. Nelly did not then own any interest in the Moody Place water right at the time the Department order was entered. Her interest in it ended with her death. And Julie Anne did not sign the Department applications. The Department order could not then convey her interest. *See* RCW 90.44.100. Likewise, Troy's second application (filed March 2003) and order (entered June 2003) are also void. *See* RCW 90.44.100. Troy signed the second application on behalf of Nelly's estate. But again, Nelly's estate did not include the water certificate. And, moreover, Troy was only a co-personal representative of the will.

In sum, the applications to the Department did not ask for a transfer of title in

certificate G3-01153. *See* RCW 90.44.100; CP at 1023-24. The applicants asked only to change the *place of use*. RCW 90.44.100; CP at 1023-24.

Troy argues that Julie Anne ratified a transfer of certificate G3-01153 from the Moody Place to the Home Place since the Department applications were only voidable and not void. And Julie Anne did nothing to challenge his claim of ownership. Appellant's Br. at 18-19. The Department's orders are void. Nelly and her estate had nothing to convey after her death. *Parr*, 146 Wash. at 356.

The court's findings of fact support its conclusions of law. *Bang D. Nguyen*, 144 Wn.2d at 530.

Settlement Agreement and Quitclaim Deeds

Settlement agreements entered under RCW 11.96A.220 are "binding and conclusive on all persons interested in the estate or trust." RCW 11.96A.220. A settlement agreement is a contract. *In re Estate of Harford*, 86 Wn. App. 259, 262, 936 P.2d 48 (1997).

The court interprets a contract by placing it in context. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 352, 103 P.3d 773 (2004). We view the contract as a whole, including the circumstances surrounding its formation. *Id.* at 351. The court will not vary, contradict, or modify the terms in an agreement, but will merely determine the meaning of specific words or terms used. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d

493, 502-04, 115 P.3d 262 (2005) (quoting *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999)).

Troy argues that the trial court erred when it awarded Julie Anne the Moody Place water right based on Nelly's intent (as demonstrated in her will). He argues that the court should have looked to the settlement agreement that followed the mediation. That agreement settled the dispute over the distribution under Nelly's will. Again Troy does not assign error to any of the court's conclusions of law. The trial court decided that: (1) Nelly did not intend to transfer the Moody Place water right by the applications to the Department; (2) the settlement agreement and subsequent exchange of quitclaim deeds, between Troy and Julie Anne, did not cause the water right to be transferred to Troy; and (3) Julie Anne is the sole owner of certificate G3-01153. CP at 1028-30. This appears to be the decision Troy objects to. And that objection implicates:

- Conclusion 22: Nelly's intent must be determined from the facts and exhibits presented at trial.
- Conclusion 25: Nelly's will supports a determination that the Department applications sought only a temporary change in place of use of the water.
- Conclusions 26 and 28: Nelly did not intend to transfer certificate G3-01153 to Troy; she instead intended to transfer it to Julie Anne.
- Conclusion 27: The settlement agreement and quitclaim deeds executed between Troy and Julie Anne did not transfer title of certificate G3-01153 to Troy; such a transfer was not intended.
- Conclusion 30: Julie Anne is the sole owner of certificate G3-01153.

- Conclusion 31: Title in certificate G3-01153 should be quieted in Julie Anne.

CP at 1028-30.

The conclusions are again amply supported by the court's factual findings. The facts here show: Nelly's will was admitted to probate. She left Julie Anne her interests in the Moody Place water right. She left Julie Anne and Troy each an undivided equal interest in her interests in the Moody Place and the Home Place.

Troy and Julie Anne were co-personal representatives of Nelly's estate. They could not "reach an agreement as to a proper distribution of their mother's estate." CP at 1025. They entered into a settlement agreement:

> "1. Julie A. Buckland will release any claim that she is entitled to any ownership interest in the Home [Place] and any appurtenant water rights and will Quit Claim any such interest to Troy W. Kissler.
> 2. Troy W. Kissler will release any claim he has an ownership interest in the property known as the 'Moody Place' and any appurtenant water rights and will Quit Claim any such interest to Julie A. Buckland."

CP at 1025-26. The settlement agreement does not specifically mention the Moody Place water right. Julie Anne and Troy executed quitclaim deeds to effect the settlement agreement.

Troy signed a second Department application to transfer the place of use of the water to the Home Place. CP at 1024. He did so without Julie Anne's knowledge and

before the settlement agreement was negotiated. The Department did not know of Julie Anne's interest in the water certificate. Julie Anne did not sign or consent to either of the applications.

The question before the trial court was whether the Moody Place water right had been transferred to, and was "appurtenant" to the Home Place at the time the settlement agreement and quitclaim deeds were executed. The dispute was over whether it had been transferred to or was intended to be transferred to the Home Place. Nelly's intent was then, of course, relevant. ER 401, 402.

First, the trial court correctly concluded that the Department applications, signed by Nelly and Troy (as personal representative of Nelly's estate), did not transfer title to the water right to the Home Place. *See* RCW 90.44.100(1); CP at 1028, 1030. The lease between Nelly and Mr. Friehe showed that no one intended a permanent transfer of title to this water right. The lease allowed Mr. Friehe to use the Moody Place well only for the term of the lease. The water rights became Nelly's at the termination or nonrenewal of the lease agreement. Moreover, Nelly's will provided for the transfer of certificate G3-01153 to Julie Anne. This supports the trial court's conclusion that Nelly did not intend to permanently transfer certificate G3-01153 to the Home Place during her lifetime. *See Adler*, 153 Wn.2d at 351.

And if that were not enough, at the time of the settlement agreement, Julie Anne

did not know about Troy's application on behalf of the estate. And she, of course, had not signed either of the Department applications. *Id.* The Department also did not know that Julie Anne had an interest in the water right.

Title to certificate G3-01153 remained part of (appurtenant to) the Moody Place. The court did not substitute Nelly's intent (in her will) for the intent of the parties under the settlement agreement. It instead correctly concluded that the parties did not intend to transfer ownership of the Moody Place water right by their settlement agreement. *Id.*; CP at 1029 (conclusion of law 27). The record here does not show that Julie Anne and Troy intended otherwise. *Adler*, 153 Wn.2d at 351. The court's findings of fact support its conclusions of law. *Bang D. Nguyen*, 144 Wn.2d at 530.

Lease Subject to Life Estate

A holder of a life estate cannot convey an interest that exceeds his or her life. *Parr*, 146 Wash. at 356; 51 Am. Jur. 2d, *supra*. Any attempt to do so is void. *Parr*, 146 Wash. at 356; 51 Am Jur 2d, *supra*.

Troy argues that the trial court erred when it concluded that the farm lease entered into by Nelly was void. Appellant's Br. at 19. We guess that he intended to challenge the court's conclusion of law 13: "Any attempt of Nelly Kissler in said lease of December 1, 2001 with Berend Friehe to enter into a lease which exceed[ed] the duration of life tenancy is void." CP at 1027.

Nelly leased Mr. Friehe the right to use the Moody Place well for a term of 11 crop years. But Nelly owned only an undivided one-half interest in the Moody Place water right. She held a life estate in the other undivided one-half interest. So she could transfer only what she owned, a life estate. *Parr*, 146 Wash. at 356; 51 Am. Jur. 2d, *supra*. The court here correctly concluded that Nelly's attempt to enter into a lease that exceeded her life was void. *Parr*, 146 Wash. at 356; CP at 1027. The court addressed "Nelly's" lease. Troy asserts that he signed a new lease with Mr. Friehe after Nelly's death. The court did not address this lease in its findings of fact and conclusions of law. Any arguments related to this lease are not properly before this court. RAP 2.5(a).

Breach of Fiduciary Duties of Co-Personal Representative

We generally review only those issues that were addressed by the trial court. *See* RAP 7.3; *Grundy v. Thurston County*, 155 Wn.2d 1, 8, 117 P.3d 1089 (2005).

Julie Anne argues that Troy breached his fiduciary duties as a co-personal representative of Nelly's estate. Resp't's Br. at 38-41. The trial court did not, however, enter any findings or conclusions on this issue. Julie Anne does not challenge the trial court's failure to enter findings or conclusions. This issue is not then appropriate for appellate review. *Grundy*, 155 Wn.2d at 8.

Attorney Fees and Costs on Appeal

We have the authority to award statutory attorney fees and costs on appeal. RAP

18.1; RAP 14.2.

Julie Anne argues she is entitled to statutory attorney fees and costs under RCW 4.84.010, .060, and .080. Resp't's Br. at 46. These statutes allow an award of statutory attorney fees, in the amount of $200, and costs to the prevailing party. RCW 4.84.010, .060, .080(2). Julie Anne is the prevailing party in this appeal. She is entitled to an award of statutory attorney fees and costs. RCW 4.84.010, .060, .080(2).

We affirm the judgment of the trial court and award statutory costs and fees to Julie Anne Buckland.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____
Sweeney, C.J.

WE CONCUR:

_____
Kato, J.

_____
Kulik, J.